

S.M.

Notice of Allowability	Application No.	Applicant(s)
	09/490,312	WEBER, GERHARD P.
	Examiner Ashwin Mehta	Art Unit 1638

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to papers received 01 October 2003.
  2.  The allowed claim(s) is/are 1-4 and 62-90.
  3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
  4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
    - (a)  The translation of the foreign language provisional application has been received.
  6.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**
7.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  8.  CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1)  hereto or 2)  to Paper No. \_\_\_\_\_.
    - (b)  including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
    - (c)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

- |   |  |
|---|--|
| <input type="checkbox"/> Notice of References Cited (PTO-892)   | <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                   |
| <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>attached</u> |
| <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No. _____  | <input checked="" type="checkbox"/> Examiner's Amendment/Comment                           |
| <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                     |
|   | <input type="checkbox"/> Other   |

*Claim Objections and Rejections*

1. The objections to claims 20 and 50, and the rejections of claims 8, 41-49, and 53-61 under 35 U.S.C. 112, 1<sup>st</sup> and/or 2<sup>nd</sup> paragraphs, are withdrawn in light of the claim cancellations.

*Examiner's Amendment*

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lila Ackrad on December 12, 2003.

In the claims:

1. Seed of hybrid maize variety [Hybrid maize seed] designated 39M27, representative seed of said variety [hybrid 39M27] having been deposited under ATCC Accession number PTA-4269.

In claim 83, line 14, "the" was deleted, and the recitation, "of backcrossing to said inbred maize parent plant" was replaced with --(c) and (d)--.

In claim 83, line 16, --fourth or higher-- was inserted after "said".

In claim 88, line 14, "the" was deleted, and the recitation, "of backcrossing to said inbred maize parent plant" was replaced with --(c) and (d)--.

In claim 88, line 16, --fourth or higher-- was inserted after "said".

3. Claims 1-4 and 6<sup>7</sup>-90 are allowed.

*Contact Information*

Any inquiry concerning this or earlier communications from the examiner should be directed to Ashwin Mehta, whose telephone number is 703-306-4540. The examiner can normally be reached on Mondays-Thursdays and alternate Fridays from 8:00 A.M to 5:30 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at 703-306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 and 703-872-9306 for regular communications and 703-872-9307 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

December 12, 2003



Ashwin D. Mehta, Ph.D.  
Primary Examiner  
Art Unit 1638